

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (hereafter the
3 “Agreement”) is entered into by and between the following Parties: **Jason Alford,**
4 **(PLAINTIFF), Dalton Georgia Wholesale Floor Covering, Inc. and Jerry Stanley**
5 **(DEFENDANTS)** (collectively the “Parties”):

6
7 WHEREAS **PLAINTIFF** and **DEFENDANTS** are parties to a civil action
8 pending in the United States District Court for the Northern District of Georgia,
9 Rome Division, styled *Jason Alford, Plaintiff, v. Dalton Georgia Wholesale Floor*
10 *Covering, Inc. and Jerry Stanley, Defendants*, Civil Action No. 14:17-cv-00152-
11 HLM-WEJ (hereinafter referred to as the “Litigation”), which action arises out of or
12 relates to the employment of or work performed by the **PLAINTIFF**;

13
14 WHEREAS pursuant to the Litigation, **PLAINTIFF** claims that the
15 **DEFENDANTS** intentionally and willfully failed to pay him the required
16 compensation under the Fair Labor Standards Act (“FLSA”) and **DEFENDANTS**
17 denies these allegations; and

18
19 WHEREAS **DEFENDANTS** have asserted state law counterclaims against
20 **PLAINTIFF**, i.e., Tortious Interference With Business Relations, Breach of
21 Fiduciary Duty and Unjust Enrichment; and

22
23 WHEREAS **PLAINTIFF** and **DEFENDANTS** desire to enter into an
24 agreement resolving and settling all claims, allegations and causes of action asserted
25 or which could have been asserted by **EITHER PARTY** in the Litigation;

26
27 WHEREAS **PLAINTIFF** warrants and represents that he has not assigned
28 any of the claims against **DEFENDANTS** that are released in this Agreement to any
29 other person or entity and that no attorneys other than Charles R. Bridgers and Kevin
30 D. Fitzpatrick, Jr. of DeLong Caldwell Bridgers Fitzpatrick & Benjamin, LLC have
31 a claim for attorneys’ fees and/or costs arising from **PLAINTIFF’S** claims released
32 in this Agreement; and

33
34 WHEREAS this Agreement constitutes a good faith settlement of all of
35 **PLAINTIFF’S** disputed claims and allegations that were asserted or could have
36 been asserted by **PLAINTIFF** in the Litigation arising out of or relating to
37 compensation for any work performed by **PLAINTIFF** for **DEFENDANTS**, and

1 shall not be deemed in any manner an admission, finding, or indication, for any
 2 purposes whatsoever, that the **Dalton Georgia Wholesale Floor Covering, Inc.**, or
 3 any of its officers, employees, and/or other agents or *Jerry Stanley* acted contrary to
 4 law or violated the rights of PLAINTIFF or any other person at any time; and
 5

6 WHEREAS this Agreement also constitutes a good faith settlement of all of
 7 DEFENDANTS' disputed claims and allegations that were asserted or could have
 8 been asserted by DEFENDANTS in the Litigation arising out of or relating to
 9 compensation for any work performed by PLAINTIFF for DEFENDANTS, and
 10 shall not be deemed in any manner an admission, finding, or indication, for any
 11 purposes whatsoever, that the PLAINTIFF acted contrary to law or violated the
 12 rights of DEFENDANTS or any other person at any time;
 13

14 NOW THEREFORE, in consideration of the mutual covenants and promises
 15 set forth herein, and for other good and valuable consideration, the receipt and
 16 sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:
 17

18 1. **Consideration.** In consideration of this Agreement and other good and
 19 sufficient consideration, including PLAINTIFFS' agreement to dismiss with
 20 prejudice the Litigation and DEFENDANTS' agreement to dismiss with prejudice
 21 their counterclaims, DEFENDANTS agree to pay a total sum of Twelve Thousand
 22 Five Hundred Dollars and 00/100 Cents (\$12,500.00), allocated as follows:
 23

24 a. The sum of Three Thousand Two Hundred Dollars and 00/100 cents
 25 (\$3,200.00) to *Jason Alford*;
 26

27 b. The sum of Nine Thousand Three Hundred Dollars and 00/100 cents
 28 (\$9,300.00) to *Kevin D. Fitzpatrick, Jr.* (PLAINTIFFS counsel) for
 29 attorneys' fees and costs,
 30

31 2. **Installment Payments.** Payment shall be made in four equal monthly
 32 payments of Three Thousand One Hundred Twenty-Five Dollars and 00/100 Cents
 33 (\$3,125.00) delivered to PLAINTIFF'S counsel, beginning ten (10) days after the
 34 Court enters an Order approving this Settlement, in three separate checks per month
 35 as follows:
 36

37 a. One Check in the amount of Four Hundred Dollars and 00/100 Cents
 38 (\$400.00) less deductions for state and federal taxes and social security,
 39

made payable to *Jason Alford*, representing back pay for which Defendants shall issue Alford an IRS Form W2

b. One Check in the amount of Four Hundred Dollars and 00/100 Cents (\$400.00) without deductions, made payable to *Jason Alford*, representing liquidated damages for which Defendants shall issue Alford an IRS Form 1099, designating such payment as Box 3 non-wage income.

c. One Check in the amount of Two Thousand Three Hundred Twenty-Five Dollars and 00/100 Cents (\$2,325.00) made payable to *Kevin D. Fitzpatrick, Jr.* representing attorneys' fees and costs of litigation, for which Defendants shall issue Fitzpatrick an IRS Form 1099.

d. Notwithstanding the foregoing, Defendants may pre-pay any or all installments set forth herein prior to the due date.

3. **Remedies in the Event of Breach.** In the event of a breach of any of the terms of the Agreement by **PLAINTIFF**, or **DEFENDANTS**, the prevailing party shall be entitled to all remedies or damages at law, and in addition thereto, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in enforcing any rights hereunder. In the event of a breach by **DEFENDANTS** that is not cured after ten (10) notice to **DEFENDANTS'** counsel, the entire outstanding principal balance shall immediately become due and payable. Interest shall accrue on the outstanding balance at the statutory rate.

4. **Taxes.** **PLAINTIFF** agrees to pay all taxes, if any, which may be deemed owing on the payments under this section, except for **DEFENDANTS** portion of FICA and other employer portion tax contributions associated with the payment designated as unpaid wages. **PLAINTIFF** further agrees that he will indemnify and hold **DEFENDANTS** and its related and affiliated entities harmless from and against any taxes, penalties and/or interest that might arise from any challenge by the Internal Revenue Service or similar state agency to his tax treatment of any amounts paid to him, except for any challenge associated with **DEFENDANTS'** responsibility for the employer portion of FICA and other employer portion tax contributions associated with the payment designated as unpaid wages.

1 5. **Warranty.** PLAINTIFF represent and warrant that Charles R.
2 Bridgers and Kevin D. Fitzpatrick, Jr. and the firm of DeLong Caldwell Bridgers
3 Fitzpatrick & Benjamin, LLC are and have been the sole attorneys for them with
4 respect to the Litigation and all claims set forth therein; that no other attorney or law
5 firm has any claim for legal fees, costs, and/or expenses relating to the Litigation;
6 and that all legal fees, costs, and/or expenses for which DEFENDANTS could be
7 liable in connection with the Litigation are discharged.

8
9 6. **Mutual Release & Waiver of Claims.** PLAINTIFF, for himself, his
10 attorneys, agents, assigns, heirs, executors, administrators and successors, hereby
11 fully, finally and forever release and discharge DEFENDANTS and all of their
12 present or former attorneys, officers, officials, employees, assigns, principals and/or
13 agents from any and all claims, demands, actions, causes of action, suits, damages,
14 losses, costs, expenses and attorneys' fees of any kind and every character
15 whatsoever, whether known or unknown, which assert a claim under the Fair Labor
16 Standards Act. DEFENDANTS for themselves, their attorneys, agents, assigns,
17 heirs, executors, administrators and successors, hereby fully, finally and forever
18 release and discharge PLAINTIFF from all claims asserted in the Counterclaim
19 DEFENDANTS asserted in the Answer [Dkt. 9] filed on their behalf in the
20 Litigation.

21
22 7. **Court Approval.** All Parties agree that, upon execution of this
23 Agreement, they shall file a joint motion for approval of the settlement to the United
24 States District Judge before whom this Litigation is pending for the purposes of
25 obtaining court approval in accordance with the Fair Labor Standards Act, 29 U.S.C.
26 § 201 *et seq.* All Parties agree that they will set the joint motion for hearing as soon
27 as possible, if necessary. If the District Court does not approve this Agreement, it
28 shall be void *ab initio*.

29
30 8. **Dismissal of Action.** Upon judicial approval of the Agreement and
31 PLAINTIFF'S receipt of all payments required under Paragraph 2. above, the
32 Parties, through counsel of record, agree to fully execute and file the Stipulation of
33 Dismissal with Prejudice attached hereto as Exhibit 1, with the court within five (5)
34 business days.

35
36 9. **Non-Disparagement.** Except as otherwise required by law, a Party
37 shall not make any statement, written or verbal, to any person or entity, including
38 any form of media, or take any action, in disparagement of any of the Parties

1 including, but not limited to negative references to a Party's services, policy,
2 partners, managers, members, employees, or take any action that might disparage a
3 Party to the general public or to a Party's employer, potential employer, employee,
4 client, supplier and/or business partners.
5

6 10. **Execution.** This Agreement shall become effective upon its approval
7 by the Court. The Parties may execute this Agreement in counterparts, and execution
8 in counterparts shall have the same force and effect as if the Parties had signed the
9 same instrument. Execution delivered by facsimile or electronic mail to the Parties'
10 counsel of record shall be deemed effective as if executed in original.
11

12 11. **Entire Release.** PLAINTIFF affirms that the only consideration for
13 his decision to execute and his execution of the Agreement are the terms stated herein
14 and that there are no other promises or arrangements of any kind which have caused
15 him to execute the Agreement; that he has been advised to and has consulted with
16 his attorneys regarding the terms, conditions and the final and binding effect of this
17 Agreement; and he understands the meaning of the Agreement and its final and
18 binding effect.
19

20 12. **Severability.** Each provision of this Agreement shall be considered
21 separable, distinct and severable from the other and remaining provisions, and any
22 breach, invalidity or unenforceability of any provision shall not impair the operation,
23 validity or enforceability of those provisions that are valid and, to the extent allowed
24 by law, such invalid or otherwise unenforceable provision may be modified by a
25 court of competent jurisdiction so as to render it enforceable. Notwithstanding the
26 foregoing sentence, if Paragraphs 1. or 2. are found to be invalid by a court of
27 competent jurisdiction, the entire Agreement is invalid.
28

29 13. **Amendments.** Any modification or change to this Agreement must be
30 made in writing and signed by all Parties.
31

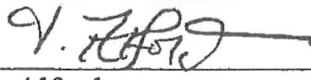
32 14. **Construction.** The language contained in this Agreement shall be
33 deemed to be approved jointly by the Parties, and no rule of strict construction shall
34 be applied against any Party hereto. No provision of this Agreement is inferred or
35 shall be interpreted or applied so as to preclude any Party to this Agreement from
36 complying with any federal, state, or local law, rule, or regulation.
37

38 15. **Governing Law.** This Agreement is executed in the State of Georgia

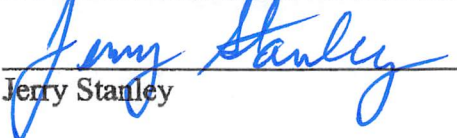
1 and all terms of this Agreement shall be governed and construed pursuant to the laws
2 of the State of Georgia.

3
4 IN WITNESS WHEREOF, the undersigned have executed this Settlement
5 Agreement and Release consisting of seven (7) pages effective February 13th
6 _____, 2018.

7
8 **ACCEPTED AND AGREED BY JASON ALFORD**

9 By: 
10 Jason Alford

11
12 **ACCEPTED AND AGREED BY JERRY STANLEY**

13 By: 
14 Jerry Stanley
15

16
17 **ACCEPTED AND AGREED BY DALTON GEORGIA WHOLESALE**
18 **FLOOR COVERING, INC.**

19
20 **DALTON GEORGIA WHOLESALE FLOOR COVERING, INC.**

21
22 By: 

23
24
25 Date: 2/13/18
26

27
28 Its _____
29
30

1

2

EXHIBIT 1

Counsel for Plaintiffs

3100 Centennial Tower

101 Marietta Street

Atlanta, Georgia 30303

(770) 979-3150

(770) 979-3170 (Fax)

kevin.fitzpatrick@dcbflegal.com

charlesbridgers@dcbflegal.com

WSACTIVE LLP: 7132442.1

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

JASON P. ALFORD,

Plaintiff,

vs.

**DALTON GEORGIA
WHOLESALE FLOOR
COVERING, INC. and JERRY
STANLEY,**

Defendants.

:
:
:
:
:
:
:
:
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:
:

**Civil Action File No.
4:17-CV-00153-HLM**

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the Parties hereby stipulate and agree to the dismissal with prejudice of the above-captioned action. Except as otherwise agreed between the parties, each party shall bear its own attorneys' fees and costs.

Respectfully submitted,

**DELONG CALDWELL BRIDGERS THE MINOR FIRM, P.C.
FITZPATRICK & BENJAMIN,
LLC**

s/ Kevin D. Fitzpatrick, Jr.
Kevin D. Fitzpatrick, Jr.
Georgia Bar No. 262375
Charles R. Bridgers

s/ Jonathan Bledsoe
Jonathan Bledsoe
Georgia Bar No. 063143

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COUNSEL FOR PLAINTIFF

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(706)259-2586
jbledsoe@minorfirm.com

COUNSEL FOR DEFENDANTS

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

JASON P. ALFORD,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
DALTON GEORGIA	:	Civil Action File No.
WHOLESALE FLOOR	:	4:17-CV-00153-HLM
COVERING, INC. and JERRY	:	
STANLEY,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that on _____, 2018, I electronically filed a true and correct copy of the parties' **STIPULATION OF DISMISSAL WITH PREJUDICE** with the Clerk of Court using the CM/EMF system which will automatically send email notification of such filing, constituting service, to the following attorneys of record:

Jonathan Bledsoe

**DELONG CALDWELL BRIDGERS
FITZPATRICK & BENJAMIN, LLC**

s/ Kevin D. Fitzpatrick, Jr.
Kevin D. Fitzpatrick, Jr.
Georgia Bar No. 262375